

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

OLIVER O'NEAL MANUEL §
v. § CIVIL ACTION NO. 6:13cv152
JASON McENTIRE, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Oliver Manuel, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The named Defendants are City of Athens police officers Jason McEntire and Marshall Passons.

Manuel complains that McEntire and Passons used excessive force on him during the course of an arrest. The Defendants answered the lawsuit and filed a motion for summary judgment arguing that Manuel resisted arrest, resulting in the use of force, and that they acted reasonably. The summary judgment evidence included a video of the actual incident. This video shows that when the officers sought to place Manuel under arrest, he stumbled backwards from his bicycle, throwing out his arms and striking McEntire with his elbow. After Manuel was on the ground, he struggled against the officers by getting to his hands and knees, attempting to stand up, while they tried to subdue him on the ground. The entire use of force lasted 32 seconds.

After review of the pleadings and the summary judgment evidence, including the video, the Magistrate Judge issued a Report recommending that the motion for summary judgment be granted and the lawsuit be dismissed. The Magistrate Judge concluded that under the totality of the

circumstances, probable cause existed for the arrest, the force used was reasonable, and the Defendants are entitled to qualified immunity.

Manuel received a copy of the Magistrate Judge's Report on December 4, 2013, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

ORDERED that the Report of the Magistrate Judge (Docket No. 21) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the Defendants' motion for summary judgment (Docket No. 20) is hereby GRANTED and the above-styled civil action is hereby DISMISSED with prejudice. It is further

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 16th day of January, 2014.



LEONARD DAVIS
UNITED STATES DISTRICT JUDGE